IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2560 OF 2004

IN

SUIT NO.2519 OF 2004

Nilkamal Plastics Ltd. ... Plaintiff.

vs.

Century Mouldings Pvt. Ltd. & others. .... Defendants.

Ms.Parvathy Kaushik, for Plaintiff.

Ms.Y.A.Antony, for Defendants 1 to 6.

CORAM: D.K.DESHMUKH,J.

DATED: 1st July,2005

P.C.:-

1. This a Notice of Motion taken out by the plaintiff. According to the plaintiff, the design of Chair of the plaintiff is registered. The defendants have copied that design and therefore, there is allegations of infringement of registered design. An objection has been raised on behalf of the defendants that this Court does not have territorial jurisdiction to try the suit, because the defendants are carrying on business outside the territorial jurisdiction of this

Court. The learned Counsel for plaintiff however submits that the Chairs manufactured by defendant nos.1 to 6 is available in the shop of defendant no.7 and the plaintiff has purchased such chair from defendant no.7. Perusal of the plaint shows that such a categorical statement has not been made by the plaintiff anywhere in the plaint. It is further to be seen that though the plaintiff relies on the cash memo – "Exhibit I" to show that by that cash memo the chairs manufactured by defendant nos.1 to 6 were sold to the plaintiff by defendant no.7, perusal of the documents produced by the plaintiff shows that the defendant nos.1 to 6 operate under the name "Shubh" whereas the Cash memo shows the name "Subh". According to defendants this shows that the chairs manufactured under the name "Subh" are sold by this Cash memo and not the chairs manufactured by defendant nos.1 to 6. Neither in the plaint nor in the affidavit filed in support of Notice of Motion, the plaintiff has anywhere explained as to why if the chairs of defendant nos. 1 to 6 are sold under the title "Shubh", the cash memo shows the name "Subh". Considering the categorical stand taken by defendant nos.1 to 6 that they neither manufacture the goods nor sale the goods within the territorial jurisdiction of this Court and as the plaintiff has not been able to establish clearly that the goods manufactured by defendant nos.1 to 6 are available within the territorial jurisdiction of this Court, in my opinion, it will not be appropriate to grant any temporary injunction in favour of the plaintiff. Hence, notice of motion disposed of.